

Judge ZILLY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,	)	NO. CR 13-165 TSZ
	)	
Plaintiff,	)	MOTIONS <i>IN LIMINE</i>
v.	)	BY DEFENDANT
	)	JOHN PARKS
JOHN CHRISTIAN PARKS,	)	
Defendant	)	NOTE FOR MOTION CALENDAR:
		<b>OCT. 11, 2013</b>

JOHN CHRISTIAN PARKS, through counsel, Terrence Kellogg, does hereby move the court for entry of an order granting defendant's instant motion *in limine* precluding the government's presentation of evidence in respect to the following four specific areas:

1. Reference to presentation of testimony or evidence concerning the manufacture, possession or use of methamphetamine or other drugs and the presence of drug paraphernalia, specifically a pipe used for smoking methamphetamine, found on the date of the incident, March 30, 2013, believed to have been sloughed by John Parks;

2. Any evidence or testimony presented concerning racial or religious views of Mr. Parks, including clothing, flags, pictures, memorabilia, and publications seized upon execution of a search warrant at the house believed to have been Park's residence prior to his detention in this case;
3. Any evidence or testimony concerning the fact of prior convictions of Parks, except as permitted by the court upon application of ER 609 should Parks elect to testify; and
4. Any in-court identification by a civilian witness as to Parks having been present at the scene of his arrest on March 30, 2013.

**Authority and Argument:**

This motion is brought pursuant to ER 403, excluding relevant evidence for prejudice, confusion, waste of time, or other reasons. ER 403 provides the court may exclude relevant evidence if its probative value is substantially outweighed by danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

It is submitted that as to each of the four specific areas set forth above, there is little or no probative value to be offered by such evidence and significant and substantial unfair prejudice to Parks should such evidence be permitted to be used by the government at the time of trial.

*Prior Convictions:*

As to the third category of evidence set forth above as the subject of the defense motion in limine, the use of prior convictions of Parks, it is anticipated the parties will enter into a stipulation as to the element of Parks being a convicted felon. Given such stipulation additional evidence presented as to the underlying facts or nature of one or more prior convictions of Parks should be precluded by the Court upon application of ER 403. See *United States v. Montoya*, 2013 U.S. App. LEXIS 11617, 18 (9th Cir. N. Mar. I. June 10, 2013): "Evidence is unfairly prejudicial when it has the capacity "to lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged." *Old Chief v. United States*, 519 U.S. 172, 180, 117 S. Ct. 644, 136 L. Ed. 2d 574 (1997). In considering whether evidence is unfairly prejudicial, a judge may consider the availability of alternative probative evidence. *Id.* at 184-85."

Count 2 of the indictment alleges Parks having previously been convicted of eight separate felony offenses in the state of Washington. Should Parks elect to testify at the time of trial, as is anticipated, ER 609(b) would preclude use by the government of five of those prior convictions as being more than 10 years remote in time, the government not having provided notice of intent to use such convictions under ER 609(b)(2). Concerning the remaining three convictions, ER

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2 609(a)(1)(B) requires the court weigh the prejudicial effect of the introduction of  
3 such prior convictions against any probative value of such evidence in  
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5 determining admissibility against a defendant who has elected to testify at trial.

6       These three prior convictions are two violations of the Uniform Controlled  
7 Substances Act, one for possession and one for possession with intent to  
8 manufacture or deliver, as well as the third conviction for an Escape Second  
9 Degree. None of these prior convictions are crimes of moral turpitude and do  
10 not implicate the truth telling ability of a defendant as witness. The court is  
11 asked to not permit any such prior convictions to be used for purposes of  
12 impeachment should Parks choose to testify at his trial because of the nature the  
13 conviction in light of the undue prejudice to Parks upon the introduction of such  
14 for impeachment purposes at trial.

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18 **Factual Basis for Motions In Limine:**

19       As provided in CrR 12(c)(2) of the Local Rules for the Western District of  
20 Washington, attached as an Exhibit are excerpts of discovery provided for  
21 consideration of this motion. Pages 1 and 2 of the attached exhibit set forth the  
22 reference in law enforcement reports to the "meth pipe" purportedly  
23 sloughed by Parks at the time of his initial arrest in this case; at pages 3 and 4 are  
24 reports as to the failure of a civilian witness to choose Parks, pictured as number  
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2 two in the photomontage presented, as the individual he observed at the scene  
3 shortly before the arrest of Parks, and, at pages 5 through 8, copies of  
4 photographs taken during the execution of a search warrant after his arrest at  
5 what was believed to be Parks' residence, the basis for the requested limitation  
6 on the government's use of evidence concerning racial or religious beliefs of the  
7 defendant at the time of trial.  
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10 In addition, discovery provided is replete with references to reports and  
11 suspicions that Parks was involved in the possession, use, and manufacture of  
12 methamphetamine prior to his detention in this case. Such references include  
13 suspicious communications of Parks while in custody at the federal detention  
14 center by examination of his telephonic and electronic communications with  
15 others. To the extent such communications are believed to be references to drug-  
16 related activity, they are asked to be precluded as evidence available to the  
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government at the time of trial.

DATED this 3rd day of October, 2013.

s/ Terrence Kellogg  
Terrence Kellogg, Attorney for  
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CERTIFICATE OF SERVICE

Terrence Kellogg does hereby certify that on the 3rd of October, 2013 he caused the document set forth above to be served on all counsel of record by filing the same with the Western District of Washington ECF system.

s/ Terrence Kellogg  
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